IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2018

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.10387 of 2018

I.P.Yesudoss ... Petitioner

Vs.

1.The State of Tamil Nadu
Represented by
The Superintendent of Police
Head Quarters, EOW-2
No.C-48, Block-2
Sidco Old Corporate Office Building
Guindy, Chennai 600032.

2.The Branch Manager
M/s IDBI Bank
Anna Nagar Branch
No.19 J, 3rd Avenue
Anna Nagar East
Chennai 600 102.

3.The Tax Recovery Officer-3
O/o Pr.CIT, Chennai-3
Office of the Principal Commissioner of Income Tax-3
4th Floor, Main Building
121, Mahatma Gandhi Road
Chennai-34. ... Respondents

Criminal Original Petition filed under Section 482 of Cr.P.C. to direct the first respondent police and the second respondent to pass an order for allowing the petitioner to operate the bank account, viz., A/c No.0777104000033318 IDBI Bank, Anna Nagar East Branch pending on accounts of the second respondent's Bank based on the petitioner's representation dated 08.04.2017.

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For Petitioner : Mr.I.P.Yesudoss - Party-in-person

For R1 : Mr.C.Iyyapparaj
Additional Public Prosecutor

For R2 : Mr.P.Elaya Rajkumar

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O R D E R

This criminal original petition has been filed to direct respondents 1 and 2 to pass an order allowing the petitioner to operate the bank account, viz., A/c No.0777104000033318 held with IDBI Bank, Anna Nagar East Branch.

2. The petitioner herein is facing prosecution in C.C.Nos.4479 of 2017 and 4984 of 2018 before the Chief Metropolitan Magistrate, Allikulam, for the offences under Sections 420 r/w 120-B, 409 and 109 IPC. The allegation against the petitioner is that he had collected money from various persons by floating certain Schemes and had cheated them. During the course of investigation, the police had frozen certain Bank accounts related to the petitioner and his concerns under the provisions of the Criminal Law Amendment Ordinance, 1944. Under such circumstances, the petitioner is before this Court with the above prayer.

3. Heard Mr.I.P.Yesudoss, party-in-person, Mr.C.Iyyapparaj, learned Additional Public Prosecutor for the first respondent-State and Mr.P.Elaya Rajkumar, learned counsel for the second respondent.

4. The police have filed a counter affidavit, wherein, it is stated as follows:

> "3. Further I submit that all the amount which was collected from the members of WSHG has been deposited in various accounts including Aphro Trust and Aphro Financial (P) Ltd. The petitioner/accused has diverted all the defaulted money in various accounts and also purchased a lot of immovable properties i.e., house sites, Agriculture land and also constructed two house buildings in his name and Devi's name. None of the properties have been purchased in the name of Aphro Trust, it shows the intention of the petitioner/accused to dilute the money in his name, in Devi's name and his brother Selva Durai's name. While getting the G.O.Ms.No.132 dt.09.02.2016. There is no contradiction or any violation since the money which was frozen by the investigating officer wholly collected from the poor public only.
>
> 4. I further submit that, after getting the G.O. Ms.No.132/2016 Home XIX Police Department dated 09.02.2016, necessary petition along with the order of the above said G.O.Ms.No.132, was

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filed before the Hon'ble Chief Judge, Small Causes Court, Chennai, with a prayer to pass an order of Ad-interim attachment of the movable properties mentioned in the schedule of property u/s 3 & 4 of Criminal Law Amendment Ordinance Act-1944. Further obtained an order of Ad-Interim attachment from the said Hon'ble Chief Judge, Small Causes Court, Chennai on 14.09.2016 in Crl.M.P.No.338 of 2016 in Crl.O.P.No.1/2006, accordingly the Hon'ble Chief Judge, Small Causes Court, Chennai appreciated the matter and admitted the affidavit and pronounced the following order "I am of the opinion that there exist the prima facie grounds to believe that the respondents namely M/s Aphro Financial (P) Ltd., IPEE Enterprises, Chennai Managaratchi Reporter, I.P.Yesudoss, Aphro Trust, IPEE Real Estate, P.Amudharaj and S.Devi, have committed scheduled offence. Hence Ad-Interim attachment is ordered." The version of petitioner/accused I.P.Yesudoss does not arise, since there is no wrong facts have been submitted to get the government order for the Ad-Interim attachment of proper.

7. I further submits that I am advised to submit that an order of attachment is passed by the Hon'ble Chief Judge, Small Causes Court, Chennai under the Criminal Law Amendment Ordinance Act-1944 against which this Criminal Original Petition is not maintainable. (The Hon'ble Chief Judge, Small Causes Court, posted the next hearing on 20.07.2018 for argument).

Thus, from the above, it is clear that these bank accounts have been frozen vide G.O.Ms.No.132, Home (Police XIX) Department dated 09.02.2016.

5. Learned Additional Public Prosecutor contended that this Court, under Section 482 Cr.P.C., cannot order de-freezing of the said accounts, since the remedy available to the petitioner is before the Chief Judge, Small Causes Court, where the attachment proceedings are pending.

6. In the opinion of this Court, what have been attached are the amounts lying in the accounts and as rightly submitted by the learned Additional Public Prosecutor, this Court cannot issue any directions with regard to the disbursal of the amounts lying in the said accounts and it is for the authority under the Ordinance to deal with the amounts lying in the said accounts

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and pass suitable orders. However, what the petitioner is seeking is permission to operate those accounts. In other words, he is not praying for disbursal of the amounts in those accounts to him and his prayer is for permission to operate those accounts.

7. On instructions, learned counsel for the second respondent submitted that the savings bank A/c No.0777104000033318 stands in the name of M/s Aphro Trust, in which, a sum of Rs.1503/- is available. He further submitted that apart from the said account, there is a savings bank account bearing A/c No.0777104000022756 in the name of I.P.Yesudoss and a sum of Rs.196.79 is available in the said account.

8. Under such circumstances, though there is no prayer seeking to operate the savings bank A/c No.0777104000022756, since the amount available in the said account is meager, the petitioner is permitted to operate the same, on submitting the Know Your Customer documents to the Manager, IDBI Bank, Anna Nagar East Branch, Chennai.

9. As regards savings bank A/c No.0777104000033318 , liberty is given to the entity in whose name the account is, to move the Chief Judge, Small Causes Court, Chennai for permission to operate the account. On such application being made, the learned Chief Judge, Small Causes Court, Chennai, shall order notice to the concerned Bank and the Police and after hearing them, shall pass orders in accordance with law. It is made clear that freezing of the amounts in the account is different and distinct from permission to operate the account.

Accordingly, this petition stands disposed of.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gms
To

1.The Superintendent of Police
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O/o Pr.CIT, Chennai-3
Office of the Principal Commissioner of Income Tax-3
4th Floor, Main Building
121, Mahatma Gandhi Road,Chennai-34.

4.The Public Prosecutor,
High Court, Madras.

5.The Chief Judge,
Court of Small Causes,
Chennai.

+2cc to Mr.Ramalingam & Associates, Advocate Sr.54128

Crl.O.P.No.10387 of 2018

srg 20/08/2018

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